



Levi Huebner
478 Malbone Street, Suite 400
Brooklyn, NY 11225
(212) 354-5555
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March 29, 2012

Via ECF To:

Hon. Steven M. Gold
United States District Court, Eastern District of New York
225 Cadman Plaza East
Room 1217
Brooklyn, NY 11201

Re: *Blumenthal Distributing, Inc. dba Office Star Products, et ano. v. Executive Chair, Inc. dba Shop Seating of Brooklyn*, Case No. 1:10-CV-01280 (CBA-SMG)

Dear Judge Gold:

Defendant cross-moves for an order of this Court for an extension of Defendant's time to take the depositions of Plaintiff's witnesses Barry Barsamian, Richard Blumenthal, Jennifer Blumenthal and Fred Rueda (Plaintiff's "Witnesses").

Additionally, Defendant's cross-move for an order of this Court compelling Plaintiff to furnish discovery; or alternatively, to strike Plaintiff's Complaint.

Plaintiff's counsel in his letter to the Court, of even date, fails to accurately reflect communications between counsels for the parties or to mention salient facts regarding the depositions and discovery.

In an effort to schedule depositions of Plaintiff's Witnesses the undersigned sent letter's dated February 6, 2012 and February 13, 2012 (the "Letters") to counsel for Plaintiff copies of which are attached hereto as Composite **Exhibit "1"**.

However, our office simply did not receive a response from Plaintiff. After counsel for Plaintiff also failed to return my calls to his office, on March 23, 2012, Defendant furnished Plaintiff with subpoenas demanding the depositions of Plaintiff's Witnesses on April 2, 2012.

Subsequently, on March 26, 2012 during a telephone conference I had with Edward Schwartz he informed me that he believed Fred Rueda was out of the Country and he also informed me that Richard Blumenthal had to fly to Chicago and would not be available in the afternoon of April 2, 2012. Mr. Schwartz further informed me that he preferred that the depositions took place in Ontario.



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I reminded Mr. Schwartz that if the depositions were conducted in Ontario there would be logistical difficulties because of my obligations to attend services to say Kaddish for my mother. I informed him that Defendant was willing to conduct the depositions in Ontario if they were held over two consecutive days for the convenience of the parties and their counsel. Mr. Schwartz stated no objection to the foregoing. Whereupon it was agreed that he would contact me regarding Mr. Rueda's availability and we would schedule two consecutive days for depositions in Ontario.

Subsequently, by e-mail dated March 26, 2012 at 7:39 p.m. (the "E-mail"). Mr. Schwartz informed the undersigned that "I have confirmed my understanding that Rueda will be out of the country on April 2, and will be returning on April 5. FYI, he will not be on my trial witness list. Notably, absent from the E-mail is any objection to the conducting the deposition on April 2, 2012 an April 3, 2012, or mention of a protective order.

In response by e-mail dated March 27, 2012 since we had agreed that the depositions would be conducted over two days in Ontario I requested that the depositions be adjourned due to Mr. Rueda's non-availability. Copies of the foregoing e-mails are attached hereto as composite **Exhibit "2"**.

Belatedly, by e-mail dated March 28, 2012 at 1:49 p.m. Mr. Schwartz, in an about face, informed the undersigned that he would only allow depositions to continue on April 1, 2012 in Ontario. Since Mr. Schwartz insisted that the depositions be held on Sunday April 1, 2012 Defendant served upon Plaintiff amended notices calling for the depositions to be held on April 1, 2012 at our office in San Diego.

However, in light of Mr. Schwartz's initial consent to conduct the depositions over two days, the fact that Mr. Rueda will not be produced, and to accommodate the schedules of the parties and their counsel (and due to the Plaintiff's failure to furnish discovery as denoted below) Plaintiff is requesting that the Defendant's time to take depositions of Plaintiff's Witnesses be extended to May 1, 2012.

Furthermore, in the Letters Defendant demanded that Plaintiff comply with outstanding discovery demands as follows:

Please be reminded that our office has not received responses from Tung-Hua Su regarding Defendant's document demands. At his January 16, 2012 deposition Su confirmed that he never conducted a search for documents relating to this matter. Moreover, Su confirmed that he received an e-mail of the 'assignment' from Office Star. To date our office has failed to receive copies of the e-mails.



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During the deposition of Su our office demanded the production of the above referenced documents. Pursuant to the FRCP 37 (a) (1) let this serve as a good faith demand for the foregoing.

Please be reminded that at the deposition of Su our office demanded the production of the documents. Pursuant to the FRCP 37 (a) (1) let this serve as a good faith demand for the foregoing. If we do not receive same our office will make a motion to compel or strike.

However, to date Plaintiff has not complied with the foregoing demands or even respond to same. Thus, Defendant respectfully requests that this Court compel Plaintiff to comply with the foregoing demands; or alternatively, to strike Plaintiff's Complaint.

Respectfully submitted.

Poltorak PC

Levi Huebner /s/

By: Levi Huebner

Cc: Via ECF To:

CHRISTIE, PARKER & HALE, LLP
Edward R. Schwartz, Esq.
655 Northern Central Avenue, Suite 2300
Glendale, California 91203

LH:ah

EXHIBIT 1



Levi Huebner
478 Malbone Street, Suite 400
Brooklyn, NY 11225
(212) 354-5555
newyorklawyer@msn.com

February 6, 2012

Via First Class Mail To:

CHRISTIE, PARKER & HALE, LLP
Edward R. Schwartz, Esq.
655 Northern Central Avenue, Suite 2300
Glendale, California 91203

Re: Blumenthal Distributing, Inc. dba Office Star Products, et ano. v. Executive Chair, Inc. dba Shop Seating of Brooklyn, Case No. 1:10-CV-01280 (CBA-SMG)

Dear Mr. Schwartz:

Kindly furnish dates for two consecutive days of availability for Plaintiff's witnesses Barry Barsamian, Richard Blumenthal, Jennifer Blumenthal and Fred Rueda who are to be deposed in California.

Which address would you prefer the US District Court located at 312 N. Spring Street, Los Angeles, CA 90012 or the US District Court located at 255 East Temple Street Los Angeles, CA 90012.

Additionally, as the Court ordered that Plaintiff's are to pay expenses kindly furnish the undersigned with a check payable in the sum of \$1,395.00 made payable to "Levi Huebner as Attorney" to cover expenses for the depositions. I will hold same in escrow pending my payment for expenses for the depositions. Additionally, I will refund any overpayment and invoice your office if the sum does not cover the expenses.

I would accept a suggestion for a court reporter in your area.

Please be reminded that our office has not received responses from Tung-Hua Su regarding Defendant's document demands. At his January 16, 2012 deposition Su confirmed that he never conducted a search for documents relating to this matter. Moreover, Su confirmed that he received an e-mail of the 'assignment' from Office Star. To date our office has failed to receive copies of the e-mails.

During the deposition of Su our office demanded the production of the above referenced documents. Pursuant to the FRCP 37 (a) (1) let this serve as a good faith demand for the foregoing.



Page 2 of 2

Thank you for your consideration in this matter. Please feel free to contact the undersigned with any questions.

Very truly yours,

Levi Huebner /s/

Levi Huebner

LH:ah



Levi Huebner
478 Malbone Street, Suite 400
Brooklyn, NY 11225
(212) 354-5555
newyorklawyer@msn.com

February 13, 2012

Via First Class Mai To:

CHRISTIE, PARKER & HALE, LLP
Edward R. Schwartz, Esq.
655 Northern Central Avenue, Suite 2300
Glendale, California 91203

Re: Blumenthal Distributing, Inc. dba Office Star Products, et ano. v. Executive Chair, Inc. dba Shop Seating of Brooklyn, Case No. 1:10-CV-01280 (CBA-SMG)

Dear Mr. Schwartz:

Kindly inform the undersigned if the following dates will work for the depositions of Plaintiff's witnesses Barry Barsamian, Richard Blumenthal, Jennifer Blumenthal and Fred Rueda:

March 12 & 13 2012, March 19 & 20, 2012, March 26, & 27, 2012.

Please be reminded that at the deposition of Su our office demanded the production of the documents. Pursuant to the FRCP 37 (a) (1) let this serve as a good faith demand for the foregoing. If we do not receive same our office will make a motion to compel or strike.

Thank you for your consideration in this matter. Please feel free to contact the undersigned with any questions.

Very truly yours,

Levi Huebner /s/

Levi Huebner

LH:ah

EXHIBIT 2

From: Levi Huebner [newyorklawyer@msn.com]
Sent: Tuesday, March 27, 2012 4:59 PM
To: 'Ed Schwartz'
Subject: RE: 1:10-cv-01280-CBA-SMG Executive Chair, Inc. Adv. Blumenthal Distributing, Inc.

Dear Mr. Schwartz:

I understand that you want to produce your clients for deposition in Ontario California. Furthermore, I understand that Barry Barsamian, Richard Blumenthal, and Jennifer Blumenthal are available. However, Fred Rueda will be out of town until April 5, 2012.

However, April 5, 2012 is impossible for me because of the upcoming Passover holiday. Additionally, as I informed you Ontario California creates limitation due to my personal obligations. Thus, if a deposition is to be held in Ontario California it would have to be split over two days.

In furtherance of our discussion I suggest that we select two consecutive days, after Passover, (April 6, 2012 – April 14, 2012) that are convenient for all parties.

Thank you for your consideration regarding this matter. Kindly get back to me at your earliest convenience.

Very truly yours,
Levi Huebner

Levi Huebner & Associates, PC
Attorneys and Counselors at Law

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From: Ed Schwartz [mailto:Ed.Schwartz@cph.com]
Sent: Monday, March 26, 2012 7:39 PM
To: 'Levi Huebner'
Subject: RE: 1:10-cv-01280-CBA-SMG Executive Chair, Inc. Adv. Blumenthal Distributing, Inc.

I have confirmed my understanding and determined that Rueda will be out of the country on April 2 and will be returning on April 5. FYI, he will not be on my trial witness list.

From: Levi Huebner [mailto:newyorklawyer@msn.com]
Sent: Friday, March 23, 2012 3:46 PM
To: Ed Schwartz
Subject: 1:10-cv-01280-CBA-SMG Executive Chair, Inc. Adv. Blumenthal Distributing, Inc.

Dear Mr. Schwartz:

Sent herewith please find the Deposition Notices regarding this action.

Thank you for your consideration in this matter. Please feel free to contact the undersigned with any questions.

Very truly yours,
Levi Huebner

Levi Huebner & Associates, PC
Attorneys and Counselors at Law

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